



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

**COMMISSION ADJUDICATORY
DOCKET NO. 615**

IN THE MATTER OF FRANK COSTA

DISPOSITION AGREEMENT

The State Ethics Commission and Frank Costa enter into this Disposition Agreement pursuant to §5 of the Commission's *Enforcement Procedures*. This Agreement constitutes a consented-to final order enforceable in the Superior Court pursuant to G.L. c. 268B, §4(j).

On May 12, 1999, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into possible violations of the conflict of interest law by Costa. The Commission concluded that inquiry, and on March 22, 2000, found reasonable cause to believe that Costa violated G.L. c. 268A, §23(b)(2).

The Commission and Costa now agree to the following findings of fact and conclusions of law:

1. At all relevant times, Costa served as a Town of Dighton selectman and board of health member. As such, Costa was a municipal employee as that term is defined in G.L. c. 268A, §1(g). Costa was first elected to the board of selectmen in 1986 and has served continuously since that time. The board of selectmen also serves as the board of health.
2. At all relevant times, Veronica Costa ("Veronica"), Costa's daughter, lived with her husband, David Silva ("David"), at 2033 Elm Street in Dighton in a house they rented from David's mother, Beatrice Tremblay ("Beatrice"). Beatrice's former husband, now deceased, caused the Elm Street house to receive its water from an illegal water line that was run from a house he also owned at 374 School Lane and now owned by David's brother Paul Silva ("Paul"). The Elm Street house continued to receive its water from the School Lane house during the period Veronica and David lived there.
3. As the result of a dispute between Paul and David regarding their father's estate, Paul shut off the water to the Elm Street house on November 13, 1998.
4. On November 13, 1998, Veronica telephoned Costa and informed him of the shutoff.
5. Costa states that he telephoned several town officials to solicit their assistance to resolve the problem, however, he was unable to reach any of them at their offices or homes.
6. Costa then called Paul and told him he (Paul) had created a "serious health violation" by shutting off the water. Paul refused to discuss the matter with Costa.

7. On Friday, November 13th and Saturday, November 14th, Costa telephoned the police department three times to seek their assistance in getting Paul to turn the water back on.

8. On November 15, 1998, Costa contacted the police department and requested an officer deliver a letter Costa had written to Paul. Officer David McGuirk delivered the letter to Paul and notified Costa of the delivery. (In making this request, Costa knew that his being a selectman and board of health member would likely cause the police department to accept his request.)

9. In his November 15, 1998 letter to Paul, Costa cited his authority as a member of the board of selectmen and board of health, and ordered Paul to repair the line and restore the water service to Elm Street by 3:30 p.m. that day, or arrangements would be made to repair the water line and all associated costs billed to Paul. Costa also asserted that a complaint had been filed alleging that Paul willfully and maliciously defiled the Elm Street water source and that, if the allegations proved true, Paul faced fines and imprisonment.

10. The other board of selectmen/board of health members never authorized Costa's actions nor were they even aware of Costa's actions until November 17, 1998.

11. Under 105 CMR 410.180, an owner must provide his tenant with potable water, and the board of health has jurisdiction to force the property owner to do so. Where Paul was not the owner of the property at 2033 Elm Street, it would have been inappropriate for the board of health to direct Paul to take any action regarding the water line. Moreover, it would have been inappropriate to re-establish the illegal water connection. The correct action would have been to direct the property owner to connect 2033 Elm Street directly to the town water supply.

12. Section 23(b)(2) of G.L. c. 268A prohibits a municipal employee from knowingly or with reason to know using or attempting to use his position to obtain for himself or others an unwarranted privilege of substantial value which is not properly available to similarly situated individuals.

13. Costa knew or had reason to know that he was using his official position in this matter by as a selectman/board of health member requesting the police department to deliver his letter, and by in that letter explicitly invoking his authority as a selectman/board of health member to order Paul to repair the line and restore water service.

14. Costa's ability as a municipal official to obtain police intervention in a private family dispute was a special advantage, and, as such a privilege.^{1/} Similarly, Costa's ability to unilaterally invoke the authority of the selectmen/board of health in a letter in such a private dispute was also a privilege.

15. These privileges were unwarranted because Costa was not lawfully authorized to so use his official position. The privileges were each of substantial values because they made it more likely that the water would be promptly turned back on, a result in which Veronica had a significant financial interest. (This water dispute could have resulted in Veronica having to find and pay for an alternative water source and/or in having to pay additional rent and/or water bills.)

16. These privileges were not properly available to similarly situated individuals.

17. In summary, by using his official position as a board of health/board of selectmen member to secure the foregoing unwarranted privileges of substantial value for his daughter, Costa violated G.L. c. 268A, §23(b)(2).

In view of the foregoing violations of G.L. c. 268A, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Costa:

(1) that Costa pay to the Commission the sum of \$1,000 as a civil penalty for the violation of G.L. c. 268A, §23(b)(2); and

(2) that Costa waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement or any other related administrative or judicial proceeding to which the Commission is or may be a party.

DATE: March 19, 2001

¹As defined in *The American Heritage Dictionary* (second college ed.), a privilege is "A special advantage, immunity, permission, right or benefit granted to an individual, class or caste."